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June 14, 2021

VIA ECF

The Honorable Joseph F. Bianco
Visiting Circuit Judge (sitting by designation in below referenced matter)
U.S. Court of Appeals for the Second Circuit
100 Federal Plaza
Central Islip, New York 11722

Re: **United States of America v. Kenner, Cr. No. 13-607 (JFB)**

Dear Judge Bianco,

We write pursuant to the Court's instruction during the June 7, 2021 conference to provide the Court with an update on our meet and confer with the government. 6/7/21 Tr. at 37:5-8, 38:14-17. On June 9, 2021 and June 14, 2021, the parties had a telephone conference to discuss the pending discovery requests. In addition to discussing those requests, the government raised that it wanted to Danske to reconsider an interlocutory sale because of the challenges presented by a Final Order of Forfeiture. In our discussions, the government was open to reconsidering terms that Danske could not agree to previously. Notwithstanding these ongoing discussions, Danske and the government agreed that we needed to press forward with discovery and discussed the pending document requests.

As set forth in Exhibit 1, following those discussions, Danske has agreed:

- ❖ In response to Request No. 2, Danske will produce 10 sample draw packages, 10 Delvin reports (in addition to the 3 Danske has already produced), and 10 funding memoranda. Danske will also consider, depending on the burden, whether it can produce 10 additional Delvin reports.
- ❖ In response to Request No. 5, Danske is investigating whether there is a policy Danske can provide. If there is no such policy, Danske will provide a general explanation of the applicable policy vis-à-vis the loan to the Borrower.
- ❖ In response to Request No. 7, Danske will represent that there are no agreements with Jowdy other than the agreements already in the government's possession and



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there are no guarantees between Danske and Legacy Cabo, LLC, Legacy Properties, LLC, KAJ Holdings LLC, and Silverpeak.

- ❖ In response to Request No. 8, Danske will represent that there was only one notice of default, which the government already possesses.
- ❖ In response to Request No. 10, Danske is evaluating whether there is any additional diligence conducted in connection with loan modifications.
- ❖ In response to Request No. 13, Danske will provide the government with an updated calculation of default interest.
- ❖ In response to Request Nos. 15 and 18, Danske will provide the government with a written explanation as to any discrepancies between Trimont's statements and Danske's statements including Danske's alleged failure to account for capitalized interest until April 2013.
- ❖ In response to Request No. 16, Danske will provide recent bank statements for Facilities A, B, and C.
- ❖ In response to Request No. 17, Danske will provide the government with a written explanation as to why \$3 million of interest payments were included on Trimont's statements but not on Danske's.
- ❖ In response to Request No. 19, the government's consultant will provide a list of open items to Danske and Danske will evaluate whether, to the extent possible, it will respond to any requests for documentation concerning the \$6.5 million in fees and closing costs.
- ❖ In response to Request No. 21, Danske will provide the government with an explanation of how advancing additional funds to the Borrower increased the risk associated with the loan to the Borrower.

With the exception of Request No. 6, which the government withdrew, Danske stands on its objections. Additional details as to outcome of the parties' meet and confers are set forth in Exhibit 1.

Danske also raised its document requests and the government stood by its objections. Danske will submit a separate letter promptly to the Court addressing the relevancy of its document requests.



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We thank the Court for its time and attention to this matter.

Respectfully,

/s/ George Kostolampros

George Kostolampros
Doreen S. Martin
Xochitl S. Strohbehn

cc: All parties of record via ECF